MONTANA LEGISLATIVE HISTORY

Chapter 195 19 67

Bill H 530 S _____ Original bill & history ____C

H. Committee on Ways & Means			S. Committee on Taxation		
Hearing Date(s)	Feb 05	✓ C	Hearing Date(s)	Feb 23	✓ C
	Feb 09	✓ C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 09	✓ C		Feb 23	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

February 5, 1967

WAYS AND MEANS COMMITTEE

A meeting of the Ways and Means Committee convened at 11:05 a.m., February 5, 1967, in Committee Room 119. Chairman Schye presided. Rep. Ainsworth was the only member absent.

The Chairman announced HB 530 as the first item for discussion. He called on Rep. Gordon Twedt, the principal sponsor of the bill, to address the committee. Rep. Twedt classed HB 530 as a revenue measure in that it placed a license fee on all public contractors, both residents and non-residents of Montana. He stated that approximately $201 million in public contracts would be let in the State in 1967 and that 1% of that total would bring a return to the State of approximately $2,016,185.00, also that every contractor in Montana pays the 1% tax and is later given a credit against his corporate income tax. Rep. Twedt suggested that the committee consider an amendment to change two or three words of the title and of Section 1 in subsection (b) so that architectural and engineering contractors would be exempt. The title of the bill would then read (in part): "An act providing for additional public contractors' license fees for all public construction work in Montana, defining terms, . . ."

Rep. Hall, also a sponsor of HB 530, considered questions asked him relating to Section 1, subsection (e), and agreed this subsection might create a problem of discrimination and could well be eliminated.

Questions and answers pointed out that this bill does not include private contractors, only those contractors doing work on public property and paid for by public funds; that it would also apply to quasi contractors if they had the proper licensing; and that this bill would equalize the bidding level of in-State and out-of-State contractors, preventing out-of-State contractors to underbid Montana firms by the amount of tax they would not be required to pay as non-residents.

Mr. Al Dougherty, Helena attorney, spoke in behalf of the architectural and engineering professions in Montana, stating he would be pleased to have the bill amended leaving out architectural and engineering contractors since they pay another professional license fee similar to doctors and attorneys and report on individual income tax forms. Mr. Dougherty stated there was conflict between HB 530 and HB 402; the Business and Industry Committee had HB 402. Rep. Hall volunteered to consolidate the two bills if the two committees so desired.

After considerable discussion regarding the depositing of funds that could be realized under HB 530, the Chairman appointed a subcommittee comprised of Representatives Ulmer, Brownlee and Lewis to study the bill.

Rep. Goan stated he had a letter from Rep. John Leuthold that would assist in the committee's disposing of HB 347 of which Rep. Leuthold is the author. Mr. Leuthold's letter, to the effect that action had already been taken to correct the problem which necessitated his bill, together with a letter from the State Board of Equalization, are attached for the record. Mr. Goan made a motion that HB 347 do not pass. On voice vote his motion carried.

Meeting adjourned at 11:55 a.m.

Elmer Schye

ELMER SCHYE, Chairman

stating that the prime purpose of this legislation is to raise revenue for the State, which would be about $150,000 a year--that this bill would close a loophole that heretofore had been passed up.

The question and answer period pointed out there was no way to circumvent the manpower involved in counting stamps turned in, and that because the profit on merchandise sold was considered in the cost of doing business, indirectly, the profit on merchandise sold was included in the gross income reported.

Rep. Ulmer made a motion that HB 533 do not pass. Motion carried on voice vote.

Chairman Schye asked for a report of the subcommittee studying Hb 530. Mr. Ulmer stated that the subcommittee had taken into consideration the proposed amendments suggested at a previous meeting, also a few additional ones; he also pointed out that if HB 402 passes, HB 530 would be dead. Mr. Ulmer then read the proposed amendments and moved adoption of same. During discussion that followed, Rep. Healy questioned the possibility of making the effective date retroactive. Rep. Goan made a motion to further amend HB 530 by striking Section 8 in its entirety and amending the title accordingly. Then he suggested a further amendment to Section 8 to the effect that this section not apply to contracts already let. Rep. Goan withdrew this suggestion, and he then withdrew his previous motion. Rep. Himsl called attention to line 9 of page 2 of the original bill, suggesting this line also be stricken. Rep. Ulmer withdrew his original motion to accept the amendments of the subcommittee, and he then read the revised amendments to HB 530, which are as follows: (1) In the title, on lines 6 and 7 of the original bill, strike the words and punctuation "ARCHITECTURAL, ENGINEERING OR" and substitute in lieu thereof "ALL PUBLIC"; (2) In the title, on lines 7 and 8 of the original bill, strike the words "TO INCLUDE NONRESIDENT CONTRACTORS"; (3) In subsection (b) of Section 1, lines 29 and 30 on page 1 of the original bill, strike the words and punctuation "architectural, engineering or" and insert in lieu thereof "all public"; (4) In subsection (b) of Section 1, line 9 on page 2 of the original bill, strike all the words on line 9: "The term also includes nonresidents."; (5) Strike subsection (e) of Section 1 in its entirety, lines 28, 29 and 30, page 2 and lines 0, 1, 2, 3, 4 and 5, page 3, of the original bill; (6) Strike Section 5, lines 23 through 29, page 5 of the original bill, and renumber the following sections accordingly; and (7) In the renumbered Section 7, lines 11 and 12 on page 6 of the original bill, strike the words, figures and punctuation "on December 31, 1967" and insert in lieu thereof the words "upon passage and approval."

Rep. Ulmer made a motion to adopt the amendments as read. On voice vote the motion carried. Mr. Ulmer made a motion to do pass HB 530, as amended. On voice vote the motion carried.

Rep. Goan asked for a final consideration of HB 526, relating to the tobacco tax. He then suggested the following amendments to the bill: (1) In Section 1, line 29 on page 2 of the original bill, strike the words and figures "fifteen percent (15%)" and insert in lieu thereof the words and figures "twelve and one-half percent (12-1/2% (2) In Section 5, lines 22 and 23 on page 3 of the original bill, strike the words "earmarked revenue fund to the 'Vietnam Veterans Honorarium Account'" and insert in lieu thereof "general fund". Mr. Goan moved adoption of the two amendments read. Motion carried on voice vote. Mr. Goan then moved that HB 526, as amended, do pass. Following a short discussion, Mr. Broeder suggested that on line 28, page 3 of the original bill, after the word "collection" add the words "and refund." Mr. Broeder made a motion to adopt the third amendment. On voice vote the motion passed. Mr. Goan then moved that HB 526, as amended, do pass. Motion carried on voice vote.

Rep. Goan reported on HB 333 regarding the sales tax. He brought the bill back to the full committee for further discussion and consideration of the amendments proposed by the subcommittee comprised of Representatives Goan, Worden, Spahr,

February 23, 1967

A meeting of the committee on Taxation was held on the above date in Room 442 with Chairman Nees presiding. Roll call was taken and a quorum was present.

HOUSE BILL 130 was taken under consideration by the committee. Rep. Elmer Schye, co-sponsor, said this was just another housekeeping bill, which provides for the two mill levy in case the general fund is out of money. It gives the governor and board of examiners the right to put it back on. When Senator Anderson suggested an amendment of a six mill levy for the university system, Rep. Schye replied it would be agreeable to put it in.

HOUSE BILL 530 was then taken under advisement by the committee. Jack Marlowe, Secretary, Montana Contractors Association, spoke on the bill in the absence of the author, Rep. Gordon Twedt. He stated this is a gross receipts tax against contractors only. It provides that payment of the 1 percent gross receipts tax can be credited against the license corporation tax. The amendment which was presented by Mr. Marlowe would also give a credit against the property tax. This is to equalize Montana contractors with out-of-state contractors who have avoided both the corporation license tax and the property taxes on the equipment they bring in. He stated this would be a good bill if it is amended, and the existing bill credit against your corporation license tax is included in the bill. During 1967, there is proposed enough work that with the 1 percent gross receipts tax, it will bring in about $2,000,000. He then gave an illustration--assuming there was $2,000,000 worth of work, immediately there would be paid a gross receipts tax of $20,000. A refund can be applied for from the State Board of Equalization in the event the gross receipts exceeds the property tax and the corporation license tax. A rebate would then be made. This does not burden the State Board of Equalization to do this. A question was asked by Senator Kafka as to what the revenue was before. Mr. Marlowe stated there has not been a gross receipts tax before and he frankly thinks this is singling out the proposed bidders on the Libby Dam. Senator Kafka asked if this would be a replacement tax to which Mr. Marlowe replied this was a new tax. The second amendment offered by Mr. Marlowe is actually a "grandfather's clause", stating the gross receipts tax cannot be imposed on contracts now in existence. Marlowe explained that he had written the proposed bidders to the Libby Dam project suggested they make an allowance for a one percent gross receipts tax and to include this in their calculation when bidding. Another facet of this bill is that in some instances under this law there could be as much as 1½% received by the state when they are subcontractors.

Rep. Schye spoke in favor of this legislation also. He said he had checked this thoroughly and they had arrived at a figure of some $2,000,000 in new revenue.

Rep. Gordon Twedt then appeared before the committee and stated the bill as it was drawn was good. All anticipated costs are included in the amount contractors bid. He did not recommend the amendments. They could pose a problem as far as property tax. This bill as written is fair and he hopes that the committee will see fit to pass it the way it is. Mr. Marlowe stated without the amendments he doesn't feel there is equality. George Pirrie, Jr., supports the bill if amended. He represents the Montana Chapter, Association of General Contractors of America. The interested parties were then excused.

HOUSE BILL 530 was further considered by the committee. Senator McGowan moved the amendments as per the committee report BE ADOPTED. Senator Mathers seconded and motion carried. Senator McGowan moved HOUSE BILL 530 AS AMENDED BE CONCURRED IN. Senator Mathers seconded and the motion carried.

HOUSE BILL 130 was then considered by the committee. Senator Gilfeather moved that Senator Anderson amend the bill to include the 6 mill levy. Senator McGowan seconded and motion carried. Senator Gilfeather moved HOUSE BILL 130 AS AMENDED BE CONCURRED IN. Senator Kafka seconded and motion carried.

The meeting was recessed until 12:45.

SENATOR NEES, Chairman

Duty of canvassing board.

"23-1807. **Duty of canvassing board.** The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or a subdivision thereof, *except members of the legislative assembly.* If a recount shall show that two or more persons received an equal and sufficient number of votes to elect to the office of state senator, or member of the house of representatives, the *state* recount board shall certify such facts to the governor."

Amending clause.

Section 9. Section 23-1812, R.C.M. 1947 is amended to read as follows:

State returns —how made.

"23-1812. **State returns, how made.** When there has been a general or special election for officers voted for by the electors of the state at large, *for members of the legislative assembly,* or for judicial officers (except justices of the peace), each clerk of the board of county canvassers, so soon as the statement of the vote of his county is made out and entered upon the records of the board of county commissioners, must make a certified abstract of so much thereof as relates to the votes given for persons for said offices to be filled at such election."

Amending clause.

Section 10. Section 23-1904, R.C.M. 1947 is amended to read as follows:

Tie vote on judicial officers.

"23-1904. **Tie vote on judicial officers.** In case any two or more persons have an equal and highest number of votes for justice of the supreme court, or judge of a district court, *or member of the legislative assembly,* the secretary of state must transmit to the governor a certified statement showing the vote cast for such person, and thereupon the governor must appoint an eligible person to hold office as in case of other vacancies in such offices."

Amending clause.

Section 11. Section 23-2402, R.C.M. 1947 is amended to read as follows:

Delegates to constitutional convention.

"23-2402. **Delegates to constitutional convention.** The number of delegates to be chosen to such convention shall be not less than one-half of the number of the members of the legislative assembly of Montana, and each *district* shall have one-half of the number of delegates as it is then entitled to elect members of the legislative assembly of Montana, provided, that when the number is an odd number, each *district* shall be entitled to one-half of the next even number. The delegates shall be elected at the next

general election or primary nominating election held throughout the state, after the Congress has proposed the amendment, or at a special election to be called by the governor, at his discretion, by proclamation at any time after the Congress has proposed the amendment, and except as otherwise provided herein, the election, in all respects, from the nomination of candidates to and including the certificate of election, shall be in accordance as nearly as may be with the laws of the state relating to the election of members of the legislative assembly of the state."

Section 12. Section 23-2403, R.C.M. 1947 is amended to read as follows: Amending clause.

"23-2403. **Nomination of delegates.** Nomination of a candidate for the office of delegate shall be by petition, which shall be signed by not less than one hundred voters of the *district.* Nominations shall be without party or political designation, but shall be as "in favor of" or "opposed to" ratification of the proposed amendment. All petitions and the acceptances thereof shall be filed not less than thirty days prior to the election." Nomination of delegates.

Section 13. Sections 16-508, 16-518, 23-1108, 23-1809, 23-1810, 23-1811, 43-101, 43-102, 43-103, 43-104, 43-105, 43-106, 43-203, and 43-204, R.C.M. 1947 are repealed. Repealing clause.

Approved: February 28, 1967.

CHAPTER 195

An Act Providing for Additional Public Contractors' License Fees for All Public Construction Work in Montana, Defining Terms, Prescribing Method of Collection and Disposition of Fees, Allowing a Credit on Corporation or Income Tax and Personal Property Taxes Paid in Montana by Licensees on Personal Property Used in Licensees' Contracting Business, Providing a Penalty and an Effective Date; Amending Sections 84-3501, and 84-3505, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 84-3501, R.C.M. 1947, is amended to read as follows: Amending clause.

Definitions.

"84-3501. **Definitions.** The following words, terms and phrases in this act are, for the purposes hereof, defined as follows:

"Person."

(a) The word 'person' includes any individual, firm, copartnership, association, corporation or other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is clearly disclosed by the context hereof.

"Public contractor."

(b) A 'public contractor' within the meaning of this act shall include any person who submits a proposal to or enters into a contract *for performing all public construction work in the state,* with the *federal government,* state of Montana, or with any board, commission or department thereof, or with any board of county commissioners, or with any city or town council, or with any agency of any thereof, or with any other public board, body, commission or agency, authorized to let or award contracts for any public work when the contract cost, value or price thereof exceeds the sum of one thousand dollars ($1,000).

"Public contractor" to include.

(c) The term 'public contractor' includes subcontractors undertaking to perform the work covered by the original contract, or any part thereof, the contract cost, value or price of which exceeds the sum of one thousand dollars ($1,000).

"Gross receipts."

(d) 'Gross receipts' means all receipts from sources within the state whether in the form of money, credits or other valuable consideration, received from, engaging in or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses or any other expense whatsoever. However, 'gross receipts' shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, and payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person."

Amending clause.

Section 2. Section 84-3505, R.C.M. 1947, is amended to read as follows:

Classes of licenses.

"84-3505. **Classes of licenses—rights granted under licenses—fees.**

(1) There shall be three *(3)* classes of licenses issued under the provisions of this act; and such classes of licenses

Rights granted under licenses.

are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

(2) The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501 (b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars ($200).

(3) The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars ($50,000); and shall pay unto the registrar as a license fee the sum of one hundred dollars ($100) for such Class B license at the time of making application therefor.

(4) The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars ($25,000); and shall pay unto the registrar as a license fee the sum of ten dollars ($10) at the time of making application therefor.

Fees.

(5) In addition to the fees enumerated above, each public contractor shall pay to the state an additional license fee in a sum equal to one per cent (1%) of the gross receipts from public contracts during the income year for which the license is issued; provided, however, that the additional license fee hereby imposed shall not be paid upon or collectible from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on the effective date of this act.

Contracts excluded.

(6) Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars ($1,000), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let

by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved."

Withholding of percentage of gross receipts.

Section 3. The state, county, city or any agency or department thereof, as described in section 84-3501 (b), for whom the contractor is performing public work, shall withhold, in addition to other amounts withheld as provided by law, one per cent (1%) of all payments due the contractor and shall transmit such moneys to the state board of equalization. In the event that the one per cent (1%) of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the state board of equalization within thirty (30) days after the date on which the contractor receives each increment of payment for work performed by the contractor. Any overpayment of the one per cent (1%) of gross receipts withheld, or paid by any contractor hereunder, shall be refunded by the state board of equalization at the end of the income year upon written application therefor.

Additional license fee as credit.

Section 4. The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in title 84, chapter 15, R.C.M. 1947, or on the contractor's income tax provided for in title 84, chapter 49, R.C.M. 1947, depending upon the type of tax the contractor is required to pay under the laws of the state.

Personal property tax as credit.

Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this act. However, in computing the tax credit allowed by this act against the contractor's corporation license tax or income tax, the personal property tax credit against the licensee fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit.

Rules and regulations.

Section 5. The state board of equalization shall establish rules and regulations necessary for the effective implementation of the provisions of this act, including, but not limited to, requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

Violation of act and penalty.

Section 6. A person failing to file a contractor's license return as provided and required by the state board of equalization, upon conviction, shall be fined not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000).

Effective immediately.

Section 7. This act shall be effective upon passage and approval.

Approved: February 28, 1967.

CHAPTER 196

An Act Creating a Montana Code of Criminal Procedure, to Codify and Generally Revise the Statutes Which Govern Court Procedures in Criminal Matters.

Be it enacted by the Legislative Assembly of the State of Montana:

The Montana Code of Criminal Procedure.

Section 1. There is hereby created The Montana Code of Criminal Procedure which is Title 95 of the Revised Codes of Montana, 1947, and provides:

TITLE 95 MONTANA CODE OF CRIMINAL PROCEDURE

PART I. GENERAL PROVISIONS

CHAPTER 1. SCOPE, PURPOSE AND CONSTRUCTION

Scope.

95-101. **Scope.** These provisions shall govern the procedure in the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law.

Purpose and construction.

95-102. **Purpose and Construction.** These provisions are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay.